रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 26] नई दिल्ली, सोमवार, मई 5, 1975/वैशाख 15, 1897
No. 26] NEW DELHI, MONDAY, MAY 5, 1975/VAISAKHA 15, 1897

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 5th May, 1975:—

BILL No. 40 OF 1975

A Bill to amend the Companies (Temporary Restrictions on Dividends) Act, 1974.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975.

(*2*) It shall be deemed to have come into force on the 1st day of March, 1975.

Amendment of section 4.

35 of 1974. **2.** In the Companies (Temporary Restrictions on Dividends) Act, 1974 (hereinafter referred to as the principal Act), in section 4, in sub-section (*1*), for the words "For a period of two years", the words "Save as otherwise provided in section 5A, for a period of two years" shall be substituted.

Amendment of section 5.

3. In section 5 of the principal Act, for the words "For a period of two years", the words "Save as otherwise provided in section 5A, for a period of two years" shall be substituted.

Insertion of new section 5A.

4. After section 5 of the principal Act, the following section shall be inserted, namely:—

Restrictions under which dividends in excess of distributable profits may be declared.

'5A. (*1*) On and from the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, and subject to the provisions of sub-section (*2*), it shall be lawful for a company to which this Act applies to declare, out of its profits for any financial year, dividend exceeding, in the aggregate, its distributable profits for that financial year.

(*2*) Where, after the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, a company to which this Act applies declares dividend for any financial year exceeding, in the aggregate, its distributable profits for that financial year, such company shall not, for a period of two years from the appointed day, make payment of so much of such dividend as exceeds its distributable profits for that financial year and, on the expiry of the said period, so much of the dividend as is in excess of the distributable profits of the company for the financial year aforesaid (the amount in excess as aforesaid being hereinafter referred to as the "deferred dividend"), shall be payable, without interest, in two equal annual instalments, the first of which shall become due and payable on the date on which the said period of two years expires.

(*3*) The provisions of sections 4 and 5 shall, except to the extent they are inconsistent with the provisions of this section, apply to a dividend declared under this section.

(*4*) No dividend shall be declared under sub-section (*1*) except after complying with the provisions of sub-section (*2A*) of section 205 of the Companies Act, 1956. 1 of 1956.

(5) The provisions of section 205A of the Companies Act, 1956, shall not apply to any instalment of deferred dividend: 1 of 1966.

Provided that if the whole or any part of an instalment of deferred dividend remains unpaid after the expiry of a period of thirty days from the date on which such instalment becomes due and payable, the provisions of the said section 205A shall apply to the amount so remaining unpaid.

(*6*) Where, after the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, a company to which this Act applies declares dividend for any financial year exceeding, in the aggregate, its distributable profits for that financial year, the provisions of the Income-tax Act, 1961, shall, subject to the provisions of sub-section (*10*), apply in relation to the whole of the dividend so declared, as they apply in relation to dividend which is declared but payment of no part of which is deferred. 43 of 1961.

(7) Where, after the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, a company to which this Act applies declares dividend for a financial year exceeding, in the aggregate, its distributable profits for that financial year, the company shall post, within forty-two days from the date of such declaration, to every shareholder entitled to the payment of the

dividend, a warrant authorising the payment of the dividend so declared, but the said warrant shall be so prepared as to authorise—

(*a*) immediate payment of so much of the dividend as does not exceed the distributable profits of the company for the financial year aforesaid (hereinafter referred to as the "immediate dividend"), and

(*b*) the payment of the deferred dividend on the respective dates on which each instalment of the deferred dividend becomes due and payable.

(*8*) Income-tax deducted under sub-section (*6*) from dividends shall be so apportioned between the immediate dividend and each instalment of the deferred dividend as to ensure that the income-tax deducted from the immediate dividend and each instalment of the deferred dividend bears the same proportion to the gross amount of the immediate dividend and the gross amount of each instalment of the deferred dividend as the total amount of the income-tax so deducted bears to the gross amount of the total dividend declared by the company.

(*9*) Every warrant issued under sub-section (7) shall be in such form and contain such particulars as may be specified by rules made under this Act.

(*10*) Notwithstanding anything to the contrary contained in the
43 of 1961. Income-tax Act, 1961, the Income-tax Officer shall not, for the purposes of that Act, treat an assessee to whom any instalment of deferred dividend is payable as in default in respect of that part of income-tax which is due in respect of such instalment of deferred dividend, as reduced by the income-tax, if any, deducted at source from such instalment, and shall continue to treat the assessee as not in default in respect of the said part of the income-tax, as so reduced, until the expiry of thirty-five days from the date on which such instalment becomes due and payable to the assessee or the warrant in respect of such instalment is transferred by the assessee to any person, whichever is earlier, and no interest shall be chargeable under sub-section (*2*) of section 220 of that Act in respect of the said part of the income-tax, as so reduced, for the period during which the assessee is treated as not in default.

Explanation.—In this sub-section, "assessee" has the meaning
43 of 1961. assigned to it in clause (7) of section 2 of the Income-tax Act, 1961.'.

STATEMENT OF OBJECTS AND REASONS

The Companies (Temporary Restrictions on Dividends) Ordinance promulgated on 6th July, 1974 restricting the distribution of net profits, after tax, by way of dividends, appears to have caused considerable uncertainty in the minds of underwriters and has made them hesitant to underwrite capital issued by new companies. It is considered necessary to tone up the capital market so as to revive the confidence of investors and underwriters in new issues. The present Bill seeks to insert new section 5A in the Companies (Temporary Restrictions on Dividends) Act, 1974 to provide that a company may declare dividend out of the profits for the financial year, in excess of its distributable profits for that financial year, and further that such excess dividend shall be payable, without interest, in two equal annual instalments after the expiry of a period of two years from the appointed day specified in the Companies (Temporary Restrictions on Dividends) Act, 1974.

Sub-sections (4), (5), (6), (7), (8) and (9) of new section 5A are of a procedural or clarificatory in nature.

Sub-section (10) of new section 5A provides that the income-tax due on the deferred dividend shall be payable by the assessee within 35 days from the date on which such instalment becomes due and payable to the assessee or the warrant in respect of such instalment is transferred by the assessee to any person, whichever is earlier. No interest shall be chargeable under the Income-tax Act, 1961, in respect of tax payable on the deferred dividend for that period.

NEW DELHI; C. SUBRAMANIAM.

The 29th April, 1975.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of Letter No. 1629/Dir(Inv)/75, dated the 29th April, 1975 from Shri C. Subramaniam, Minister of Finance, to the Secretary-General, Lok Sabha.]

The President having been informed of the subject-matter of a proposed Bill to amend the Companies (Temporary Restrictions on Dividends) Act, 1974, recommends under clause (1) of Article 117 and clause (1) of Article 274 of the Constitution, the introduction of the Bill in the Lok Sabha.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 12 of the Companies (Temporary Restrictions on Dividends) Act, 1974, empowers the Central Government to make rules to carry out the provisions of the Act. Sub-section (9) of section 5A, proposed to be inserted by clause 4 of the Bill, empowers the Central Government to specify, by rules, the form in which dividend warrants shall be issued under sub-section (7) of section 5A and the particulars which such warrants shall contain.

2. The matters in relation to which the power to make rules is proposed to be conferred on the Central Government are matters of procedure and detail and it is hardly possible to provide for them in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1975